

STATE OF MICHIGAN
COURT OF APPEALS

In re BARRONE/MERRIAM, Minors.

UNPUBLISHED
February 19, 2015

No. 323063
St. Joseph Circuit Court
Family Division
LC No. 2013-000078-NA

Before: BECKERING, P.J., and BORRELLO and GLEICHER, JJ.

PER CURIAM.

The circuit court terminated respondent-mother’s parental rights to her two young children, CB and RM, pursuant to MCL 712A.19b(3)(g) (failure to provide proper care and custody). Because petitioner established that respondent did not benefit from two years of intensive services customized to accommodate her cognitive impairment, we affirm.

I. BACKGROUND

Child Protective Services (CPS) became involved with respondent in May 2012, following a substantiated report that her boyfriend, JS, was “being rough” with then 2-1/2 year old CB. Respondent was pregnant and JS lived with her. CPS provided services to respondent to maintain CB in her care, including assistance in evicting JS who was physically abusive. Shortly after RM’s birth, CPS determined that it was necessary to remove the children from respondent’s care because she was not retaining lessons taught by her service providers. Moreover, CB had extreme behavioral issues—including tantrums, violence toward others, and banging his head against the floor—and respondent exhibited no ability to control the child. The children were placed in a nonrelative foster care placement.

Between January 2013 and July 2014, the Department of Human Services (DHS) provided extensive services to respondent in an attempt to reunify her with the children. A psychological evaluation revealed that respondent had an IQ of 78, evidencing borderline cognitive ability. To overcome respondent’s limitations, all service providers ensured that lessons were repeated to assist retention, and that short sentences with easy vocabulary were used to ensure understanding. Respondent attended individual counseling sessions throughout the proceedings, but continually asserted that she did not require treatment. Despite that respondent had been the victim of a horrific sexual assault as a teenager, she refused to address her trauma with counselors. She repeatedly asserted that her parenting skills were fine and did not need improvement. Respondent also engaged in a series of romantic relationships, which she

kept secret from her counselors. One of these relationships was with a convicted sex offender. Respondent never acknowledged the inappropriateness of her choices in men.

Respondent also participated in two sets of parenting skills classes. Respondent scored poorly on after-session assessments, even when the tests were read to her. Respondent failed to internalize the lessons taught at these sessions. She refused to incorporate the skills she learned during parenting time. Further, respondent never gained an understanding of her children's development, expecting RM to reach milestones much earlier than possible, but believing that CB could not handle activities well below his age level.

Respondent never progressed beyond supervised parenting time. During the child protective proceedings, various counselors and parenting class coordinators observed the parenting time sessions and provided advice to respondent. However, respondent exhibited a flat affect and rarely made eye contact with or smiled at the children. Respondent also failed to consistently interact with the children and even ignored them during some visits. As a result, the children lost any bond they shared with their mother. They began acting out and eventually parenting time sessions were shortened, and then the frequency was reduced. When the DHS filed its termination petition, parenting time was suspended. The children's behavior then improved dramatically.

Ultimately, the DHS determined that respondent could not benefit from services within any reasonable time frame. Visitation had become harmful to the children's mental wellbeing as well. Accordingly, the DHS sought termination of respondent's parental rights. The court agreed with the DHS that respondent would not be able to provide proper care and custody within a reasonable time given the age of the children and that termination was in the children's best interests. Respondent now appeals the termination decision.

II. STATUTORY GROUND FOR TERMINATION

Respondent challenges the evidentiary support for terminating her parental rights under MCL 712A.19b(3)(g). Specifically, she asserts that the DHS failed to accommodate her cognitive impairments when providing reunification services, thereby assuring her failure. The record does not support respondent's complaint. First and foremost, we note that respondent did not preserve this issue. Neither respondent nor her counsel raised any challenge to the type of services being provided until closing argument at the termination hearing. The "time for asserting the need for accommodation in services is when the court adopts a service plan," not at the eleventh hour. *In re Frey*, 297 Mich App 242, 247; 824 NW2d 569 (2012); see also *In re Terry*, 240 Mich App 14, 26; 610 NW2d 563 (2000). However, even absent a request for accommodations, the DHS was already tailoring services to meet respondent's special needs.

Pursuant to MCL 712A.19b(3), a circuit court "may terminate a parent's parental rights to a child if the court finds, by clear and convincing evidence" that at least one statutory ground has been proven. The petitioner bears the burden of proving that ground. MCR 3.977(A)(3); *In re Trejo*, 462 Mich 341, 350; 612 NW2d 407 (2000). We review a circuit court's factual finding that a statutory termination ground has been established for clear error. *In re Rood*, 483 Mich 73, 90-91; 763 NW2d 587 (2009). "A finding of fact is clearly erroneous if the reviewing court has a definite and firm conviction that a mistake has been committed, giving due regard to the trial

court's special opportunity to observe the witnesses." *In re Moss*, 301 Mich App 76, 80; 836 NW2d 182 (2013) (quotation marks and citation omitted). "Clear error signifies a decision that strikes us as more than just maybe or probably wrong." *In re Williams*, 286 Mich App 253, 271; 779 NW2d 286 (2009).

"When a child is removed from a parent's custody, the agency charged with the care of the child is required to report to the trial court the efforts made to rectify the conditions that led to the removal of the child." *In re Plump*, 294 Mich App 270, 272; 817 NW2d 119 (2011).¹ "The adequacy of the petitioner's efforts to provide services may bear on whether there is sufficient evidence to terminate a parent's rights." *In re Rood*, 483 Mich 73, 89; 763 NW2d 587 (2009). "[A trial] court is not required to terminate parental rights if the State has not provided to the family of the child . . . such services as the State deems necessary for the safe return of the child to the child's home." *Id.* at 105 (quotation marks and citation omitted).

Here, CPS and DHS provided respondent with intensive services for a full two years. Respondent participated in two separate parenting skills courses. Respondent had the benefit of multiple overlapping counselors. Parenting aides provided hands-on assistance during visitation to help respondent improve her skills. The case worker testified that she has never provided such intensive services to any other client. The case worker coordinated with all service providers to ensure that they understood respondent's cognitive impairment and how to adequately instruct respondent to assure retention and understanding. With these services, respondent showed brief glimpses of improvement, but ultimately regressed to a point where parenting time sessions had to be suspended. It is insufficient for a parent to participate in services, the parent must also show benefit from the services such that the conditions that led to court intervention are remedied. *In re White*, 303 Mich App 701, 710; 846 NW2d 61 (2014). The DHS presented clear and convincing evidence that respondent had not benefitted from the services provided and as a result, she would be unable to provide proper care and custody for her children within a reasonable time.

III. BEST INTERESTS

Respondent also challenges the circuit court's determination that termination of her parental rights was in the children's best interests. "Once a statutory ground for termination has been proven, the trial court must find that termination is in the child's best interests before it can terminate parental rights." *In re Olive/Metts*, 297 Mich App 35, 40; 823 NW2d 144 (2012), citing MCL 712A.19b(5). "[W]hether termination of parental rights is in the best interests of the child must be proven by a preponderance of the evidence." *Moss*, 301 Mich App at 90. The trial court should weigh all the evidence available to it in determining the child's best interests. *Trejo*, 462 Mich at 356-357. Relevant factors in this consideration include "the child's bond to the parent, the parent's parenting ability, the child's need for permanency, stability, and finality, and the advantages of a foster home over the parent's home." *Olive/Metts*, 297 Mich App at 41-42 (citations omitted).

¹ In cases where services are not statutorily required, the DHS is required to inform the court of the basis for withholding services. *Plump*, 294 Mich App at 272.

Respondent urges this Court to hold that *Moss* incorrectly adopted the “preponderance of the evidence” standard for the best-interest analysis in parental rights termination cases. Respondent suggests that this Court must instead apply the clear and convincing evidence standard. We are bound by this Court’s prior published opinions, MCR 7.215(C)(2), and therefore decline respondent’s invitation to revisit this issue.

Moreover, that termination was in the children’s best interests is supported even under the higher clear and convincing evidence standard. By the time of the termination hearing, the children had been in foster care for 18 months. RM had lived with her mother for only one month of her short life. Parenting time sessions had not fostered the bond between mother and child. After two years of services, respondent basically ignored RM, claiming that RM did not talk to her. CB drifted further from his mother emotionally over time, eventually calling her by her first name instead of “mom.” During parenting time, respondent revealed an inability to connect with her children, maintaining a flat affect and monotone voice and seldom smiling. As a result of the lack of emotional attachment, the children began acting out after parenting time. CB even reverted to his dangerous habit of banging his head.

Respondent’s inability to improve her parenting skills over the two-year period also supported the circuit court’s conclusion. Respondent attended two separate parenting classes and received hands-on training during individual counseling. Despite repeated lessons, respondent never exhibited an ability to manage both children at once. She still did not understand how to control CB’s behavior, placing the child in danger of harm. Respondent also never grasped lessons about child development in order to interact properly with the children based on their maturity level.

And the children were placed together in a foster home. The foster mother expressed a desire to adopt the children. The children were flourishing in the foster mother’s care and by all accounts were doing “amazing.” Terminating respondent’s parental rights allowed the children to proceed toward adoption, giving them the stability and permanence they required. Accordingly, we discern no grounds to set aside the circuit court’s best-interests determination.

We affirm.

/s/ Jane M. Beckering
/s/ Stephen L. Borrello
/s/ Elizabeth L. Gleicher